

19225

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-198691

DATE: August 24, 1981

MATTER OF: Copy Machines, Inc.

DIGEST:

1. [Protest against alleged restrictive nature of specifications] is denied where procuring activity has shown that specifications reflect agency's minimum needs.
2. Bid is responsive where bidder failed to return standard form 33 (cover sheet of invitation with signature block) and amendment 0001 because bidder did acknowledge receipt of amendment 0002 by signing and returning with bid package, which constituted sufficient evidence of intent to be bound, and amendment 0001 added no material requirements.

Copy Machines, Inc. (CMI), has protested the restrictiveness of the specifications contained in invitation for bids (IFB) No. DABT51-80-B-0135 issued by the Department of the Army, Fort Bliss, Texas. CMI also contends that the bid submitted by A. B. Dick of El Paso (A. B. Dick) is nonresponsive.

We do not consider the protest to have merit.

This IFB for the lease of three word processing systems was issued to correct deficiencies found by the Army following an earlier protest by CMI under solicitation No. DABT51-80-R-0060 which resulted in an award to A. B. Dick. Upon the filing of the protest, the Army conceded that a common cutoff date had not been established and that a specification had been relaxed for A. B. Dick without permitting other offerors the opportunity to propose on the same basis. Therefore, the Army proposed to allow the initial 4-month contract period to be completed by A. B. Dick and recompeted the two 1-year options.

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CMI's first contention is that the specifications contained in the IFB have been rewritten since the -0060 solicitation around the A. B. Dick equipment in such a manner that CMI cannot bid responsively and, therefore, the specifications are restrictive of competition.

CMI notes that 2 years ago the Fort Bliss Comptroller's office conducted a study of the entire Air Defense School to determine what word processing system would best meet the needs of the three Directorates of the school and the CMI system was favorably considered. Notwithstanding the findings of the Comptroller's office, the specifications for the resolicitation were arbitrarily and capriciously revised, in the view of CMI, to keep CMI from bidding its equipment and to permit the continued use of the improperly obtained A. B. Dick system.

CMI notes that many of the automatic features required under the original specifications were deleted and manual operation (which is more time consuming and, therefore, more costly) was permitted. Examples are the originally required automatic global search and replace in one step and automatic paragraph numbering features. In addition, CMI contends features needed by the users such as outline creation, automatic table of contents and key word indexing were deleted because the A. B. Dick system could not provide these features. Also, the specifications were revised to require a screen which displayed 24 lines of material instead of the originally required 16 lines. CMI states that this change does not take into consideration the fact that the CMI system scrolls vertically a line at a time through an entire document or up to 110 pages (the capacity of the disk) so that one can see the continuity from one page to the next and can position the screen to see any portion of the page desired. Finally, the characters displayed by the CMI screen are twice as tall as those on the A. B. Dick screen, thereby reducing eye strain for the user.

The general rule applied by our Office is that we will not question an agency's determination as to what its minimum needs are unless there is a clear showing that the determination is unreasonable. We follow this rule on the premise that Government

procurement officials are generally in the best position to know what constitutes the actual needs of the Government and are, consequently, in the best position to draft specifications expressing these needs. Particle Data, Inc., B-179762, B-178718, May 15, 1974, 74-1 CPD 257; On-Line Systems, Inc., B-193126, March 28, 1979, 79-1 CPD 208; Tyco, B-199632, March 24, 1981, 81-1 CPD 220.

Based on this standard, we must disagree with the contention that the specifications are improperly restrictive. The three Directorates of the school for which the word processing systems were being procured were all requested to formulate their requirements for such a system. Under the prior procurements, this input was not obtained but the specifications were drafted by the Air Defense School Center. Therefore, these are the first specifications drafted utilizing the views of the actual users, the three Directorates.

While CMI argues that many features were deleted or replaced by manual features, this action was not restrictive of competition but, on the contrary, permitted more firms to be able to compete. The specification revision that was restrictive, as concerns CMI, was the change from 16 lines to 24 lines of material displayed on the screen. Initially, one of the Directorates wanted a full-page display as a requirement because of its frequent use of columns of text and pictures. However, a compromise was reached between the three Directorates that one-half page of text displayed would be acceptable and, therefore, the specifications incorporated 24 lines as the minimum need of the user activities. The revised specifications were sent to the General Services Administration (GSA) for review and the record reflects that GSA had no objection to this portion of the specifications.

Based upon our review of the entire record, we find the Army has reasonably justified the specifications as reflecting its minimum needs and, therefore, this basis of protest is denied.

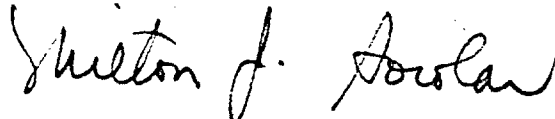
Finally, CMI contends that the A. B. Dick bid is nonresponsive because standard form (SF) 33 was not returned, the bid was unsigned and receipt of amendment 0001 was not acknowledged.

The A. B. Dick bid contained the entire bid package with the exception of SF 33, which is the cover sheet with the blank for the bidder's signature, and amendment 0001. However, A. B. Dick did return amendment 0002 signed with its bid.

Amendment 0001 merely reworded the requirement for the central processing unit and included a new pricing schedule. Amendment 0002 contained a new pricing schedule, which superseded the one contained in the prior amendment, and deleted the requirement that each work station have dual disk drives. Therefore, amendment 0001 added no requirements to the contract and A. B. Dick's failure to acknowledge receipt of the amendment may properly be waived.

Regarding the failure of A. B. Dick to sign the basic bid on SF 33, the signature on amendment 0002 constitutes sufficient evidence to indicate the bidder's intent to be bound. See W. L. Thomas, Inc., B-194700, May 11, 1979, 79-1 CPD 339; Johnson Auto Parts, B-182102, September 10, 1974, 74-1 CPD 157, and Defense Acquisition Regulation § 2-405(iii)(B) (1976 ed.).

The protest is denied.



Acting Comptroller General
of the United States